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FM AMEMBASSY MANILA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4148
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS IMMEDIATE
RUEHKO/AMEMBASSY TOKYO IMMEDIATE 2990
RUEHNH/AMCONSUL NAHA IMMEDIATE 0052
RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE
RUEKJCS/JOINT STAFF WASHINGTON DC IMMEDIATE
RHEHNSC/NSC WASHDC IMMEDIATE
RUEKJCS/SECDEF WASHDC IMMEDIATE

UNCLAS SECTION 01 OF 02 MANILA 004880

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TOKYO PLEASE PASS TO DAS ERIC JOHN

E.O. 12958: N/A

TAGS: [PREL](#) [MARR](#) [CASC](#) [KCRM](#) [RP](#)

SUBJECT: VERDICTS IN ALLEGED RAPE CASE; AMBASSADOR PROTESTS
JUDGE'S CUSTODY DECISION

REF: MANILA 4864 AND PREVIOUS

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Verdicts

[¶1.](#) Makati City Regional Trial Court Judge Pozon on December 4 found U.S. Marine Lance Corporal Daniel Smith guilty in a November 1, 2006 alleged rape of a Filipina at the Subic Bay Metropolitan Authority compound. He proclaimed a sentence of "reclusion perpetua," statutorily no less than 20 and no more than 40 years. He assessed civil damages at 100,000 pesos (approximately US\$2,000). He based his decision largely on prosecution testimony that the complainant was intoxicated and not able effectively to resist, and dismissed as "not credible" the testimony from Smith and his co-defendants that the sex was consensual. Smith's attorney notified Judge Pozon of his intent to appeal the verdict.

[¶2.](#) In the same judgment, Judge Pozon found Staff Sergeant Chad Carpentier, Lance Corporal Keith Silkwood, and Lance Corporal Dominic Duplantis not guilty as principals, accessories, or accomplices to the alleged rape. With Embassy and III MEF assistance, they departed Manila on a U.S. military aircraft at 1615 local time. They will return to their unit in Okinawa for further investigation by their commander.

Custody of Smith

[¶3.](#) Judge Pozon ordered that Smith be taken into immediate custody at the Makati City Jail, and rejected a defense motion to return Smith to U.S. custody during his appeals, as provided by the Visiting Forces Agreement (VFA). In recent days and weeks, Ambassador and senior Embassy officials had underscored to senior Philippine government officials that, in the event of any convictions, the U.S. would retain custody, as provided by the VFA, until the end of all judicial proceedings, including appeals. We have urged that Smith's defense attorney, as well as the Philippine Department of Justice, immediately file a new motion for reconsideration of the custody issue (as well as on the verdict itself). As of 1800 local time, Smith had been transferred to the Makati City Jail, but not yet locked in a cell. RSO has obtained the jail warden's agreement to allow

Smith to be in a single cell, to receive personal effects, and to be accompanied by an Embassy/III MEF official outside the cell at all times.

¶4. Ambassador and DCM have protested vigorously to senior GRP officials over Smith's detention in Philippine custody, contrary to the VFA. Philippine Cabinet officials are conferring with President Arroyo to seek a way out of the impasse over custody triggered by Judge Pozon's order. The Secretary of Justice and the Department of Foreign Affairs

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have released statements supporting the view that Smith should be in U.S. custody during his appeal, according to VFA.

Embassy statement

¶5. Embassy released the following statement immediately after the verdict on December 4. We will work with Washington on a statement tonight regarding Smith's custody.

Begin text

Verdict in Subic Case

The U.S. Embassy notes the decision of the Philippines court in the case of the four U.S. service members accused of involvement in the alleged rape of a Filipina citizen on November 1, 2005.

With their acquittal on criminal charges, Carpentier, Duplantis and Silkwood will return directly to their military unit. Their Commander will now take action regarding the completion of the U.S. military's own investigation of this case. The U.S. will continue to abide by the Visiting Forces Agreement through the completion of all judicial proceedings,

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including any appeals.

This has been a difficult and emotional matter for all involved, and for their families and friends. The U.S. Government has adhered throughout to the terms of the Visiting Forces Agreement (VFA), which provides the framework for U.S.-Philippines cooperation on legal cases involving U.S. service members.

End text

KENNEY